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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EUDORO ALCAZAR MAGANA,

Defendant and Appellant.

A156013

(San Mateo County  
Super. Ct. No. 16SF005960A)

Defendant Eudoro Alcazar Magana appeals a judgment entered upon his plea of no contest to forcible rape. His attorney has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has been apprised of his right to personally file a supplemental brief, but he has not done so.

Evidence at the preliminary hearing showed that the victim of the crime, Jane Doe, reported that defendant, who worked for a janitorial business, took Doe to a job site to clean a building. While they were cleaning, defendant picked Doe up and tried to kiss her, then took her to a small room and closed the door behind them. He removed her clothing, forced her to the ground, and had sexual intercourse with her against her will, at one point repositioning her and reinserting his penis. Doe told him not to do so, but she was terrified and stopped resisting physically. She cried throughout the incident.

Defendant was interviewed by police officers. After initially denying that he touched Doe, defendant admitted that he had intercourse with her and that she told him “no” two or three times and pushed him away twice.

Defendant was charged with two counts of forcible rape (Pen. Code, § 261, subd. (a)(2)),<sup>1</sup> with allegations the offenses were serious and violent felonies (§§ 1192.7, subd. (c), 667.5, subd. (c)), and that defendant was ineligible for probation or suspension of sentence (§ 1203.065, subd. (a)).

On the People’s motion, the trial court removed defendant’s counsel based on his chronic lateness, lack of due diligence, and incompetence. Defendant brought a petition in this court for a writ of mandate or prohibition, which a different panel of this division denied in a published opinion. (*Magana v. Superior Court* (2018) 22 Cal.App.5th 840.) New defense counsel was appointed. Defendant brought a petition for writ of prohibition and request for stay of the trial court proceedings, which we denied. (*Magana v. Superior Court*, A154294 [May 18, 2018].)

Pursuant to a negotiated disposition, defendant pled no contest to one of the two counts of forcible rape, with an agreement that he would be sentenced to three years in prison. Before entering his plea, he was informed of, and acknowledged, the constitutional rights he was giving up and the consequences of his plea. The second count of rape was dismissed and the special allegations were stricken.

Consistent with the terms of the plea agreement, the trial court sentenced defendant to the low prison term of three years. (§ 264, subd. (a).) It ordered him to submit his blood for HIV testing (§ 1202.1) and imposed fines and fees.

There are no meritorious issues to be argued.

#### **DISPOSITION**

The judgment is affirmed.

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<sup>1</sup> All statutory references are to the Penal Code.

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TUCHER, J.

WE CONCUR:

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POLLAK, P. J.

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BROWN, J.